

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD  
CENTRAL PUGET SOUND REGION  
STATE OF WASHINGTON

COMMUNITY ALLIANCE TO REACH OUT &  
ENGAGE,

Petitioner,

v.

KING COUNTY,

Respondent.

**CASE No. 13-3-0003**

**FINAL DECISION AND ORDER**

**SYNOPSIS**

On December 3, 2012, King County adopted Ordinance No.17485 updating its Comprehensive Plan (CP) and Development Regulations (DRs).

The Community Alliance to Reach Out and Engage (CARE) challenged a Comprehensive Plan and map amendments in the update which allowed change of use for a particular property. The Board determines:

CARE failed to prove that the legislative action was non-compliant with the Growth Management Act. This case was dismissed.

**I. STATEMENT OF FACTS AND PROCEDURAL BACKGROUND**

The property at issue in this case is a single parcel located within King County's urban growth boundary. At the time that the Melki family acquired the property, part of the parcel was zoned Office (O) with the additional "map designation" of Potential Regional Business (RB),<sup>1</sup> and part of the parcel was zoned R1 (Residential, 1 dwelling unit per acre).<sup>2</sup> The potential zone classification was assigned pursuant to KCC 21A.04.170. The property land use classification was Commercial Outside of Center (CO), a designation which

<sup>1</sup> HOM Transcript at 64.

<sup>2</sup> HOM Transcript at 64.

1 recognizes commercial uses predating the 2008 King County Comprehensive Plan that  
2 were located outside a designated center.<sup>3</sup> Once a veterinarian's office,<sup>4</sup> the property is  
3 provided public water service by King County Water District No. 90. Sewer service is not  
4 available, but the property has a Public Health-approved holding tank system.<sup>5</sup>

5 In 2008, the Melki family applied for an administrative zone reclassification of the  
6 property to Regional Business for the purpose of operating a used car lot, utilizing the  
7 existing office structure and pavement on the property. While supportive of the Melki  
8 family's general clean-up of the dumping that had taken place prior to the Melki family's  
9 ownership, CARE opposed the zone reclassification. During the quasi-judicial review of the  
10 Melki proposal, CARE challenged the SEPA DNS. The Hearing Examiner initially upheld  
11 the DNS and granted the rezone, then reversed himself *sua sponte* and recommended that  
12 the King County Council deny the reclassification<sup>6</sup> based on an extensive analysis of the  
13 KCCP land use policy.<sup>7</sup>

14 At the time of the Melki application for administrative zone reclassification, former  
15 King County Urban Land Use Policy provided that:

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17  
18  
19 U-168 Stand-alone commercial developments legally established outside  
20 designated centers in the Urban Growth Area may be recognized with the  
21 CO designation and appropriate commercial zoning. When more detailed  
22 subarea plans are prepared, these developments may be designated as  
23 centers and allowed to grow if appropriate, or may be encouraged to  
24 redevelop consistent with the residential density and design policies of the  
comprehensive plan.<sup>8</sup>

25 U-169 The CO designation may be applied as a transitional designation in  
26 Potential Annexation Areas identified in a signed memorandum of  
27 understanding between a city and the county for areas with a mix of urban  
28 uses and zoning in order to facilitate the joint planning effort directed by the  
29 memorandum of understanding. Zoning to implement this transitional  
designation should recognize the mix of existing and planned uses. No zone

30 <sup>3</sup> ME005133, Examiner's Finding 37 (August 4, 2010).

31 <sup>4</sup> ME003830, Examiner's Finding 12 (March 31, 2010).

32 <sup>5</sup> ME005125, Examiner's Finding 6, (August 4, 2010).

<sup>6</sup> *Id.*

<sup>7</sup> ME005132-ME005133.

<sup>8</sup> ME005132, Examiner's Finding 42 (citing [Former] King County Urban Land Use Policy U-168 (October 2008))(August 4, 2010).

1 changes to these properties to allow other nonresidential uses, or zone  
2 changes to allow expansion of existing nonresidential uses onto other  
3 properties, should occur unless or until a subarea planning process with the  
4 city is completed.<sup>9</sup>

5 The Melki parcel is within the Potential Annexation Area (PAA) of the City of Renton.  
6 To date there is no County-adopted sub-area plan for this portion of Renton's PAA. The  
7 examiner concluded that "[u]ntil the subarea planning occurs, actuation of the Potential RB  
8 zone on the site would be inconsistent with the comprehensive plan," and so inconsistent  
9 with the Code.<sup>10</sup> The King County Council adopted the examiner's revised recommendation  
10 on October 25, 2010, denying the Melki rezone.<sup>11</sup>

11  
12 As part of the 2012 Comprehensive Plan amendment process, the KCC enacted  
13 Ordinance 17485, adopting the King County 2013 Comprehensive Plan and amending  
14 Development Regulations. Relevant to this case, Ordinance 17485 adopted map  
15 amendment 10, placing regional business zoning (RB zoning) on the Melki parcel, and  
16 amended former U-168, now recodified as U-169, to read:

17  
18 U-169 Stand-alone commercial developments legally established outside  
19 designated centers in the Urban Growth Area may be recognized with the  
20 CO designation and appropriate commercial zoning, including any identified  
21 potential zoning classification. An action to implement a potential zoning  
22 classification shall not require a detailed subarea plan, if the current CO  
23 designation is to remain unchanged. When more detailed subarea plans are  
24 prepared these developments may be designated as centers and allowed to  
25 grow if appropriate, or may be encouraged to redevelop consistent with the  
26 residential density and design policies of the comprehensive plan.<sup>12</sup>

27 CARE challenged King County's enactment of Ordinances 17485.<sup>13</sup> Gebran  
28 Melki/Melki Family, owners of the property at issue, moved to intervene on March 21, 2013.

29  
30 <sup>9</sup> ME005133, Examiner's Finding 36 (citing [Former] King County Urban Land Use Policy U-169 (October  
31 2008))(August 4, 2010).

32 <sup>10</sup> ME005142-ME005145, Examiner's Findings 14-17 (August 4, 2010).

<sup>11</sup> ME005158-ME005159, Signature Report, Ordinance 16954 October 25, 2010.

<sup>12</sup> ME000284 King County Land Use Policy U-169 (December 2012).

<sup>13</sup> In the Prehearing Order, the case schedule was coordinated with another challenge to Ordinance No. 17485  
and 17486 – City of Snoqualmie v. King County, Case No. 13-3-0002 -- to avoid inadvertent inconsistencies.  
The cases were briefed and heard and are decided separately.

1 The Board granted the motion, with Gebran Melki as representative of the Intervenor.<sup>14</sup> The  
2 parties filed prehearing briefs and motions as follows:

- 3 • Petitioner's Opening Brief, May 21, 2013 (CARE Opening Brief);
- 4 • King County's Response Brief, June 4, 2013 (County Response);
- 5 • Petitioner's Reply Brief, June 11, 2013 (CARE Reply).

6 The Hearing on the Merits was convened June 17, 2013, at the King County  
7 Courthouse. Present for the Board were Margaret Pageler, presiding officer, Cheryl Pflug  
8 and Charles Mosher. Petitioner CARE appeared by its president, Gwendolyn High,  
9 accompanied by Debi Eberle. Respondent King County was represented by attorney Cristy  
10 Craig, accompanied by Senior Deputy Prosecuting Attorney Darren Carnell. Intervenor  
11 Melki did not submit a brief but appeared at the Hearing on the Merits at the request of the  
12 Board through its representative Gebran Melki. Melki orally stated his support of the  
13 County's brief and arguments.<sup>15</sup> Leslie Sherman of Buell Realtime Reporting provided court  
14 reporting services.<sup>16</sup> The hearing provided the Board an opportunity to ask questions  
15 clarifying important facts in the case and providing better understanding of the legal  
16 arguments of the parties.  
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18  
19

## 20 II. BOARD JURISDICTION

21 The Board finds the Petition for Review was timely filed pursuant to RCW  
22 36.70A.290(2). The Board finds the Petitioner has standing to appear before the Board,  
23 pursuant to RCW 36.70A.280(2)(b). The Board finds it has jurisdiction over the subject  
24 matter of the petition pursuant to RCW 36.70A.280(1).  
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<sup>14</sup> Order Granting Intervention (April 2, 2013).

<sup>15</sup> HOM Transcript at 74.

<sup>16</sup> The Board ordered a transcript of the hearing, cited herein as "HOM Transcript."



1 county's actions are not boundless; their actions must be consistent with the goals and  
2 requirements of the GMA.<sup>25</sup>

3 Thus, the burden is on Petitioner to overcome the presumption of validity and  
4 demonstrate that the challenged action taken by the County is clearly erroneous in light of  
5 the goals and requirements of the GMA.  
6

#### 7 IV. PRELIMINARY MATTERS

##### 8 Issues Disregarded

9 Because the case was initially coordinated with Case No. 13-3-0002, which  
10 challenged the same County enactment, Petitioner addressed some issues in its reply brief  
11 that related to Countywide Planning Policies at issue in the other case.<sup>26</sup> However, the  
12 other case was ultimately heard separately. With the consent of all the Parties, the Board  
13 disregarded those sections of the Petitioner's brief pertaining to Ordinances 17486 and  
14 17487.<sup>27</sup>  
15  
16

##### 17 Post-Hearing Materials

18 At the Hearing on the Merits, the Board requested color copies of a map of the area.  
19 CARE filed copies of the map with the Board on July 3, 2013. Pursuant to WAC 242-03-640,  
20 the Board takes official notice of material fact and admits the map as:  
21

22 **HOM Ex. 1, Renton East Plateau Zoning & UGA Prezone map.**  
23  
24  
25

26 and goals of this chapter. Local comprehensive plans and development regulations require counties and cities  
27 to balance priorities and options for action in full consideration of local circumstances. The legislature finds that  
28 while this chapter requires local planning to take place within a framework of state goals and requirements, the  
29 ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and  
30 implementing a county's or city's future rests with that community."

31 <sup>25</sup> *King County v. CPSGMHB*, 142 Wn.2d 543, 561, 14 P.2d 133 (2000) (Local discretion is bounded by the  
32 goals and requirements of the GMA). See also, *Swinomish*, 161 Wn.2d at 423-24. In *Swinomish*, as to the  
degree of deference to be granted under the clearly erroneous standard, the Supreme Court has stated: "The  
amount [of deference] is neither unlimited nor does it approximate a rubber stamp. It requires the Board to give  
the [jurisdiction's] actions a "critical review" and is a "more intense standard of review" than the arbitrary and  
capricious standard." *Id.* at 435, n.8.

<sup>26</sup> Case No. 13-3-0002 also challenged Ordinance Nos. 17486 and 17487, revising King County's Countywide  
Planning Policies (CPPs), which were not challenged by Petitioner CARE.

<sup>27</sup> HOM Transcript at 7.

1 **Order of Discussion**

2 While arguments were complex and fact-intensive, the Board finds that this case  
3 hinges on two issues and so orders its analysis as follows:  
4

5 **Section One. Consistency Requirements under GMA**

6 The Board begins by noting that many of Petitioner's arguments allege that the  
7 County's action was inconsistent with GMA goals and *principles* (emphasis added) or with  
8 the County's Planning Policy(s). We therefore begin with a discussion of the purpose and  
9 uses of, and relationship between, various hierarchical elements of the GMA. Based on this  
10 analysis, Issues 1, 2, 4, 5, and 6 are decided.  
11

12 **Section Two. County Legislative Authority**

13 The Board then discusses legislative discretion and coordinated planning under  
14 GMA. Based on this analysis, Issues 3, 7 and 8 are decided.  
15  
16

17 **V. LEGAL ISSUES AND DISCUSSION**

18 **The Challenged Actions**

19 CARE challenged King County's enactment of Ordinance 17485. Ordinance 17485  
20 adopts the 2012 update to the Comprehensive Plan and development regulations. Rather  
21 than discussing Petitioner's legal issues in numerical order, the Board first addresses issues  
22 of consistency with the GMA and County Planning Policies. Issues concerning the  
23 Metropolitan King County Council's legislative authority arising out of the provisions of RCW  
24 36.70A.010, RCW 36.70A.020, RCW 36.70A.030, RCW 36.70A.110(3)-(4), RCW  
25 36.70A.130(1), RCW 36A.70.040, RCW 36.70A.010, and RCW 36.70A.020 follow.  
26  
27

28 **Section One. Consistency Requirements under GMA**

29 Issue 1: Did King County Ordinance 17485 fail to comply with RCW 36.70A.070,  
30 36A.70.130(1), RCW 36.70A.040 and 36.70A.210, because the Melki Rezone:  
31

32 1) Is not guided by King County Countywide Planning Policy (KCCWPP) LU-73, King  
County Comprehensive Plan (KCCP) Chapter 1 Section II (preamble) and King  
County Countywide Planning Policy(CWPP) LU-73, and

1 2) Creates inconsistency with KCCP policies U-110, U-147, U-170, I-101, RP-104  
2 and RP-201, and

3 3) Fails to implement provisions of KCC 21A.04.110 that establish access to sewer  
4 and transportation infrastructure as criteria for designation as Regional Business?

5  
6 Issue 2: Did King County Ordinance 17485 fail to comply with RCW 36.70A.070,  
7 36A.70.130(1), RCW 36.70A.040 and 36.70A.210, because the Melki Rezone:

8 1) Is not guided by KCCWPP LU-73 and KCCP Chapter 1 Section II (preamble), and

9 2) Creates inconsistency with KCCP policies U-149, U-150, U-151, U-152, and U-  
10 153, and

11 3) Fails to implement provisions of KCC 21A.04.110 that establishes RB locations as  
12 appropriate only in urban activity centers or rural towns?

13  
14  
15 Issue 4: Did King County Ordinance 17485 fail to comply with RCW 36.70A.100,  
16 36.70A.110, 36.70A.030 and 36.70A.210 because the Melki Rezone:

17 1) Does not implement KCCWPP LU-29 and LU-33, and

18 2) Is not consistent with KCCP policies U-125 and RP-201, and

19 3) Is not consistent with Renton Comprehensive Plan (RCP) Objectives LU-A and  
20 LU-HH and policies LU-3, LU-36, LU-51, LU-52, LU-53, LU-54, LU-55, LU-73, LU-151  
21 and LU-153 because the RCP zoning designation for the parcel, formally adopted  
22 during a pre-annexation process supported by the work of a Citizens Task Force  
23 conducted in 2006/2007, is R-1 (Residential – 1 house per acre) for the parcel, and

24 4) Is not consistent with RCP Objective LU-DD, and policies LU-134, LU-135, and  
25 LU-136 which concentrate all vehicle dealership zoning in the City Center  
26 approximately 4 miles away, and

27 5) Is not consistent with RCP Objectives U-A and U-B and policies U-1, U-9, U-12, U-  
28 13, U-18, U-19, U-55, U-58, U-59, U-61, and U-62 which establish the sewer system  
29 planning and prioritization criteria for the parcel within the service area of the City of  
30 Renton, the designated sewer service provider, and  
31  
32



1       6) Renders Renton's Long Range Waste Water Management Plan inadequate  
2       because there is no plan for service provision or funding for sewer system extension  
3       to provide access to the parcel at the time of occupancy and commencement of the  
4       newly allowed use?

5  
6       Issue 5: Did King County Ordinance 17485 fail to comply with RCW 36.70A.110(3) and (4)  
7       and 36.70A.030 because the Melki Rezone places RB zoning designation in an area not  
8       adequately served by public facilities and services, and did not acknowledge, given the  
9       realities of access and proximity, that Renton is the unit of local government most  
10       appropriate to provide urban services?

11  
12       Issue 6: Did King County Ordinance 17485 fail to comply with RCW 36A.70.130(1) and  
13       36A.70.040 because the amendment to KCCP U-169:

- 14  
15       1) Is inconsistent with the King County Comprehensive Plan Policies I-101, U-151,  
16       and RP-201 and  
17       2) Fails to implement KCC 21A.04.110 and 21A.04.170 by preempting the subarea  
18       planning process required to determine appropriate commercial urban activity center  
19       locations (where RB is to be located according to KCC 21A.04.110.B) and renders  
20       the policies ineffective by premature RB zoning placement?  
21

## 22       Discussion

23  
24       The GMA identifies non-hierarchical goals to be used exclusively for the purpose of  
25       guiding counties and cities in developing and adopting comprehensive plans and  
26       development regulations.<sup>28</sup> In addition to outlining the goals of comprehensive planning and  
27       development regulation, the GMA contains specific mandates. One of those mandates  
28       recognizes the need for counties to identify a *method* for creating and amending  
29       comprehensive plans through the adoption of a written Countywide Planning Policy.<sup>29</sup> Just  
30       as the GMA guides the development of (CPs), and amendments thereto, so the CPPs guide  
31  
32

<sup>28</sup> RCW 36.70A.020 (*emphasis added*).

<sup>29</sup> RCW 36.70A.210(1).

1 the development and amendment of comprehensive plan or development regulation.<sup>30</sup>  
2 However, GMA and CPP guidelines are just that and ultimately require the jurisdiction to  
3 legislatively balance competing goals and priorities in developing its own local plan.<sup>31</sup> As  
4 previously noted, the GMA grants deference to local legislative authority. As the Court of  
5 Appeals recently explained:  
6

7 A comprehensive plan amendment must “conform to [the GMA].” RCW  
8 36.70A.130(1)(d). But “the GMA is not to be liberally construed.” *Woods v.*  
9 *Kittitas County*, 162 Wn.2d 597, 612 & n.8, 614 (citing *Skagit Surveyors &*  
10 *Eng’rs, LLC v. Friends of Skagit County*, 135 Wn.2d 542, 565, 958 P.2d 962  
11 (1998)). Thus, a comprehensive plan must obey the GMA’s clear mandates.  
12 See *Thurston County v. W. Wash. Growth Mgmt. Hr’gs Bd.*, 164 Wn.2d 329,  
13 341-42, 190 P.3d 38 (2008). A newly adopted or amended development  
14 regulation must be “consistent with and implement the comprehensive plan.”  
15 RCW 36.70A.040(3)(d), (4)(d), (5)(d); RCW 36.70A.130(1)(d); see WAC  
16 365-196-805(1). But “a comprehensive plan is a ‘guide’ or ‘blueprint’ to be  
17 used when making land use decisions.” *Citizens for Mount Vernon*,  
18 133 Wn.2d at 873 (quoting *Barrie v. Kitsap County*, 93 Wn.2d 843, 849, 613  
19 P.2d 1148 (1980)). Thus, a development regulation need not strictly adhere  
20 but must “generally conform” to the comprehensive plan. *Id.* (quoting *Barrie*,  
21 93 Wn.2d at 849).<sup>32</sup>

22 Thus, the GMA, CPPs, and CPs contain both general guidelines and specific  
23 mandates.<sup>33</sup> The Board echoes the hearing examiner that “a great number of the CPP plan  
24 policies identified in this matter as of concern or . . . barring the rezone . . . are either not  
25 applicable because of their framework policy nature or other general implementation  
26 guidance nature or are irrelevant to the specific rezone action requested.”<sup>34</sup> The action at  
27 issue cannot be found inconsistent with policies that are inapplicable or irrelevant to the  
28 affected property.  
29

30 <sup>30</sup> The CPP is to be used “solely for establishing a countywide framework by which a county and city  
31 comprehensive plans are developed. . . .” RCW 36.70A.210 (*emphasis added*); See also Hearing Examiner’s  
32 Finding 25, Revised Report and Recommendation to the Metropolitan King County Council, August 4, 2010.

<sup>31</sup> RCW 36.70A.040.

<sup>32</sup> *Kittitas County v. Kittitas County Conservation Coalition*, 2013 Wash. App. LEXIS 1873(Aug. 13, 2013) at 5.

<sup>33</sup> e.g., RCW 36.70A.070.

<sup>34</sup> ME005131, Examiner’s Finding 28 (October 2010).

1           **The Board finds** that King County Countywide Planning Policies LU-29,<sup>35</sup> LU-33,<sup>36</sup>  
2 LU-73,<sup>37</sup> the preamble to the King County Comprehensive Plan, and King County  
3 Comprehensive Plan policies U-110<sup>38</sup>, U-147<sup>39</sup>, U-170<sup>40</sup>, I-101<sup>41</sup>, RP-104,<sup>42</sup> RP-201,<sup>43</sup>  
4 RCW 36.70A.010,<sup>44</sup> and RCW 36.70A.030,<sup>45</sup> and RCW 36.70A.110(3)<sup>46</sup> are so general in  
5

6  
7 <sup>35</sup> ME005986, "All jurisdictions shall develop growth phasing plans consistent with applicable capital  
8 facilities plans to maintain an Urban Area served with adequate public facilities and services to meet at least  
9 the six-year intermediate household and employment target ranges consistent with LU-67 and LU-68. These  
10 growth phasing plans shall be based on locally adopted definitions, service levels, and financing commitments,  
11 consistent with State Growth Management Act requirements. The phasing plans for cities shall not extend  
12 beyond their potential annexation areas. Interlocal agreements shall be developed that specify the applicable  
13 minimum zoning, development standards, impact mitigation and future annexation for the potential annexation  
14 areas."

15 <sup>36</sup> King County Countywide Planning Policies at 28 (updated October 2008), "LU-33: Land within a city's  
16 potential annexation area shall be developed according to that city's and King County's growth phasing plans.  
17 Undeveloped lands adjacent to that city *should* be annexed at the time development is proposed to receive a  
18 full range of urban services. Subsequent to establishing a potential annexation area, infill lands within the  
19 potential annexation area which are not adjacent or which are not practical to annex shall be developed  
20 pursuant to interlocal agreements between the County and the affected city. The interlocal agreement shall  
21 establish the type of development allowed in the potential annexation area and standards for that development  
22 so that the area is developed in a manner consistent with its future annexation potential. The interlocal  
23 agreement shall specify at a minimum the applicable zoning, development standards, impact mitigation, and  
24 future annexation within the potential annexation area."

25 <sup>37</sup> ME005986 "Non-conforming uses *should* transition to conforming uses. Non-conforming structures *should*  
26 be re-used to house conforming uses *unless the size and scale of the structure significantly limits the intensity*  
27 *and quality of development* that can be achieved." (*emphasis added*)

28 <sup>38</sup> KC Ordinance 17485, Attachment A at 2-6 (December 2012), "U-110 King County shall work with cities,  
29 especially those designated as Urban Centers, in collaborative efforts that result in transfers of development  
30 rights from the Rural Area."

31 <sup>39</sup> KC Ordinance 17485, Attachment A at 2-18 (December 2012), pertaining to considerations for locating  
32 [new] business/office park developments.

<sup>40</sup> KC Ordinance 17485, Attachment A at 2-24 (December 2012), "U-170 The CO designation may be applied  
as a transitional designation in Potential Annexation Areas identified in a signed memorandum of  
understanding between a city and the county for areas with a mix of urban uses and zoning in order to  
facilitate the joint planning effort directed by the memorandum of understanding. Zoning to implement this  
transitional designation should recognize the mix of existing and planned uses. No zone changes to these  
properties to allow other nonresidential uses, or zone changes to allow expansion of existing nonresidential  
uses onto other properties, should occur unless or until a subarea planning process with the city is completed."

<sup>41</sup> KC Ordinance 17485, Attachment A at 11-1, Chapter 11 implementation, Amendments, and Evaluation  
(December 2012), "King County's regulation of land use *should: ...*" (*emphasis added*).

<sup>42</sup> KC Ordinance 17485, Attachment A at 1-4 (December 2012), "King County's planning should strengthen  
communities by addressing all the elements, resources and needs that make a community whole, including:  
economic growth and the built environment, environmental sustainability, health and human potential, and  
justice and safety."

<sup>43</sup> KC Ordinance 17485, Attachment A at 1-6 (December 2012), "King County's planning *should* include multi-  
county, countywide, and subarea levels of planning. Working with residents, special purpose districts and  
cities as planning partners, the county *shall strive to balance* the differing needs identified across or within  
plans at these geographic levels."(*emphasis added*)

<sup>44</sup> Legislative findings section introducing GMA.

1 nature as to be inapplicable as evaluative criteria. KCC 21A.04.110, explaining the purpose  
2 and uses of RB zones, KCC 21A.04.170, explaining the purpose and use of potential zone  
3 map designations, and KCC 21A.38.020, describing the authority and application of general  
4 provisions for property-specific development standards/special district overlays are equally  
5 inapplicable. None of these provisions contain specific requirements that would support a  
6 determination of non-compliance.  
7

8 **The Board finds** that King County Comprehensive Policies U-125<sup>47</sup> pertaining to  
9 zoning to increase density, U-147<sup>48</sup> pertaining to considerations for locating [new]  
10 business/office park developments, and U149 through U-153<sup>49</sup> pertaining to Unincorporated  
11 Area Centers are irrelevant to the Melki rezone because they do not apply to the parcel in  
12 question. Additionally, the Renton Comprehensive Plan Objectives and Policies referenced  
13 in Issue 4 and the Renton Long Range Waste Water Management Plan are inapplicable to  
14 the Melki rezone because the property at issue is not within the Renton City Limits. Finally,  
15 KCC 21A.24.060, 20.24.180 and 20.24.190 pertain only to administrative reclassification  
16 and so are irrelevant to this legislative change in zoning.  
17

18 Issue 1, Issue 2, Issue 4, Issue 5, and Issue 6 are dismissed.  
19

## 20 **Section Two. County Legislative Authority and Coordinated Planning**

21 Petitioner advances a theory, “cross-consistency paradigm,”<sup>50</sup> in which consistency  
22 requirements flow not only from the top down (*i.e.*, DRs must be consistent with CPs), but  
23 also from the bottom up. In so doing, Petitioner tends to apply strict construction where  
24 case law supports only general conformity. Under Petitioner’s paradigm, GMA Goals<sup>51</sup> may  
25 be so liberally construed as to render a county’s Comprehensive Plan inconsistent with  
26 GMA if an amendment to the CP is not consistent with a previously-enacted DR. The Board  
27  
28  
29

30 <sup>45</sup> Definitions section of GMA.

31 <sup>46</sup> Pertaining to priorities for locating urban growth.

32 <sup>47</sup> KC Ordinance 17485, Attachment A at 2-12 (December 2012).

<sup>48</sup> KC Ordinance 17485, Attachment A at 2-18 (December 2012).

<sup>49</sup> KC Ordinance 17485, Attachment A at 2-18 thru 2-20 (December 2012).

<sup>50</sup> HOM Transcript at 21.

<sup>51</sup> RCW 35.70A.020.

1 does not find support for this “cross-consistency paradigm” anywhere in statute or in  
2 established case law.<sup>52</sup>

3  
4 Issue 3 Did King County Ordinance 17485 fail to comply with RCW 36A.70.130(1) and  
5 36A.70.040 because the process by which the Melki rezone was adopted:

- 6 1) Failed to follow the process established in KCC 21A.38.020, and 21A.44.060, for  
7 increasing development standards or limiting uses on specific properties, and  
8 2) Failed to follow the processes specified in KCC 20.24.180 and 20.24.190 for zone  
9 reclassification?  
10

## 11 12 **Applicable Law**

13 RCW 36.70A.040 establishes the criteria, such as population, that determine which  
14 counties must plan under GMA and a set of deadlines by which various categories of  
15 counties are to establish a Countywide Planning Policy, a Comprehensive Plan, and  
16 Development regulations to implement the CP.<sup>53</sup> RCW 36.70A.130(1) calls for periodic  
17 review and evaluation of the CP and development regulations and reiterates that the CPs  
18 are to be consistent with the goals of the GMA.  
19

20 KCC 21A.38.20 authorizes King County to, *inter alia*, “increase development  
21 standards or limit uses on specific properties beyond the general requirements of this title  
22 through property-specific development standards, ...”<sup>54</sup> and goes on to authorize the  
23 application of property-specific development standards (p-suffix conditions)<sup>55</sup> through area  
24 zoning in the CP<sup>56</sup> or through the administrative reclassification<sup>57</sup> process:  
25

26 Property-specific development standards shall be applied to specific  
27 properties through *either* area zoning as provided in K.C.C. 20.12 and K.C.C.

28  
29 <sup>52</sup> “[A] proposed land use decision must only *generally conform*, rather than strictly conform, to the  
30 comprehensive plan.” Woods v. Kittitas County, 162 Wn.2d 597, 613, 174P.3d 25 (2007)(*italics original*, citing  
31 *Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861, 873, 947 P.2d 1208 (1997).

32 <sup>53</sup> RCW 36.70A.040(3).

<sup>54</sup> KCC 21A.38.20(A).

<sup>55</sup> KCC 20.12.050(B).

<sup>56</sup> KCC 20.12 COMPREHENSIVE PLAN and KCC 20.18 PROCEDURES FOR AMENDMENT OF  
COMPREHENSIVE PLAN OR OF DEVELOPMENT REGULATIONS-PUBLIC PARTICIPATION.

<sup>57</sup> KCC 21A.44.060. (*emphasis added*)

1 20.16, or reclassifications of individual properties as provided in K.C.C. 20.24  
2 and 21A.44 . . . .<sup>58</sup>

3 (There is a scrivener's error in KCC 21A.38.20<sup>59</sup> because KCC 20.16 has been recodified  
4 as KCC 20.18.)

5 KCC 21A.44.060 sets forth the criteria for administrative zone reclassification.<sup>60</sup>  
6

7 **Discussion**

8 CARE argues that KCC 20.12 and KCC 20.18 require that the Melki rezone be  
9 adopted by way of a CP amendment *and* an administrative reclassification. The County  
10 agrees that under KCC 21A.38 the Melki rezone required a CP amendment to allow  
11 actualization of identified potential zoning classifications without a detailed subarea plan  
12 when the CO designation remains unchanged,<sup>61</sup> but argues that the language in KCC  
13 21A.38.020(B) grants the Council legislative discretion to change zoning through CP  
14 amendments<sup>62</sup> concurrent with the CP update process<sup>63</sup> and contends that a parallel  
15 administrative reclassification would be duplicative and unnecessary under KCC 21A.38.20.  
16 The Board agrees. KCC 21A.38.20 employs "either" and "or" to describe two parallel  
17 rezoning processes.  
18

19 **The Board finds** that CARE errs in construing KCC 21A.38.20 to require an  
20 administrative reclassification in addition to legislative adoption of CP amendments that  
21 change zoning. Issue 3 is dismissed.  
22

23  
24 Issue 7: Did King County Ordinance 17485 fail to implement RCW 36.70A.010 and RCW  
25 36.70A.020 because adoption of the Melki Rezone fails to implement GMA Goals 1, 3, 11  
26 and 12 in the following ways:  
27

28  
29 <sup>58</sup> KCC 21A.38.020(B). (emphasis added)

30 <sup>59</sup> HOM Transcript at 39.

31 <sup>60</sup> "A zone reclassification shall be granted only if the applicant demonstrates that the proposal complies with  
32 the criteria for approval specified in K.C.C. Title 20.24.180 and 20.24.190 and is consistent with the  
Comprehensive Plan and applicable community and functional plans." KCC 21A.44.060.

<sup>61</sup> Former KCPP U-168, amended and recodified as U-169.

<sup>62</sup> KCC 20.18.

<sup>63</sup> KCC 20.20.020(E) n. 4 (requiring a map amendment to increase development standards or limit uses on  
specific properties (p-suffix conditions).

- 1       1) Adequate public facilities and services do not exist and cannot be provided to the  
2       Melki Rezone parcel in an efficient manner, and  
3       2) Not only is there no planning or funding for regional scale transportation system  
4       improvements to serve the proposed regional scale business of the zone  
5       reclassification applied to the parcel, but necessary local transportation system safety  
6       and capacity issues are not planned and funded, and  
7       3) Appropriate public involvement was rendered impracticable because King County  
8       failed to follow the established processes for zone reclassification, as well as those  
9       for increased property-specific development regulations and limiting uses,  
10       established in the Comprehensive Plan and the King County Code, and  
11       4) King County failed to coordinate with the City of Renton to ensure provision of  
12       sewer service to the parcel, and  
13       5) Necessary public facilities and services are not adequate at the time of occupancy  
14       and use?

17  
18   **Applicable Law**

19       RCW 36.70A.010 introduces the Growth Management Act by stating Legislative  
20   findings that prompted its enactment and reads:

21       The legislature finds that uncoordinated and unplanned growth, together with  
22       a lack of common goals expressing the public's interest in the conservation  
23       and the wise use of our lands, pose a threat to the environment, sustainable  
24       economic development, and the health, safety, and high quality of life  
25       enjoyed by residents of this state. It is in the public interest that citizens,  
26       communities, local governments, and the private sector cooperate and  
27       coordinate with one another in comprehensive land use planning. Further,  
28       the legislature finds that it is in the public interest that economic development  
29       programs be shared with communities experiencing insufficient economic  
30       growth.

31       RCW 36.70A.020 presents a non-prioritized list of planning goals, including:

32       (1) Urban growth.       Encourage development in urban areas where  
     adequate public facilities and services exist or can be provided in an efficient  
     manner.

...

(3) Transportation. Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans.

(11) Citizen participation and coordination. Encourage the involvement of citizens in the planning Process and ensure coordination between communities and jurisdiction to reconcile conflicts.

(12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

## Discussion

### Goal (1) Urban Growth

CARE argues that the Melki rezone allows an expanded use that is inconsistent with surrounding residential areas. The County responds that there exists a commercial retail shopping center in the immediate vicinity of the Melki parcel (kitty-corner across the intersection).<sup>64</sup> Both parties present petitions: from residential areas opposing the rezone<sup>65</sup> and neighboring businesses supporting it.<sup>66</sup> The County argues that the Melki rezone is not new “development” in that the p-suffix conditions do not allow expansion of structures on the property and the permitted use does not generate an increase in the amount of vehicle traffic generated above that of the previously existing use.<sup>67</sup>

The Board notes GMA Goal 1 calls for urban uses to be located within the urban growth area; the urban growth area is defined as an area where urban facilities and services can be efficiently provided. The Melki property is within King County’s designated urban growth area and the proposed used-car lot is clearly urban. CARE hasn’t argued that the UGA boundary should be redrawn to exclude Melki’s lot.

**The Board finds** the County’s action to accommodate re-use of a commercial lot within the UGA is not inconsistent with GMA Goal 1.

<sup>64</sup> ME003829, Hearing Examiner’s Finding 4 (March 31, 2010).

<sup>65</sup> ME000267-72; ME00472.

<sup>66</sup> ME000266.

<sup>67</sup> HOM Transcript at 42-44.



1 Goal (3) Transportation

2 The DNS acknowledges that the transportation corridor at 128<sup>th</sup> and 164<sup>th</sup> fails the  
3 County's transportation concurrency standards. DDES recommended denial of the Melki  
4 rezone saying that in light of the failed transportation corridor, "rezoning of the subject  
5 property to RB, *carte blanche*, would be premature at this time."<sup>68</sup> The rezone was therefore  
6 specially conditioned in the County's legislative action.  
7

8 In *Bothell v. Snohomish County*,<sup>69</sup> the Board invalidated a proposed up-zone of 93  
9 acres along a failed transportation corridor where new high-density subdivisions would allow  
10 486 more housing units than existing zoning. The Board found the County's land-use action  
11 was inconsistent with its transportation plan and violated GMA Goal 3 – Transportation.

12 Here, by contrast, the County Council adopted p-suffix conditions to the RB rezone  
13 for the Melki parcel, ensuring there will be no increase in traffic as a result of the RB zoning.  
14

15 **The Board finds** the County's action does not violate GMA Goal 3.

16 Goal (11) Public Participation and Coordination between Jurisdictions

17 GMA Goal (11) calls for public participation and for coordination between jurisdictions  
18 to reconcile conflicts. Both parties acknowledge that CARE participated vigorously in the  
19 initial administrative reclassification process and the legislative process leading up to the  
20 recent Comprehensive Plan amendment. CARE argues the County failed to coordinate with  
21 the City of Renton.  
22

23 Auto Sales

24 The City of Renton responded to the proposed administrative rezone and later, the  
25 legislative rezone, with several objections to the Melki used-car lot proposal.<sup>70</sup> Most  
26 significantly, Renton pointed out its comprehensive plan establishes the Renton Auto Mall –  
27 a commercial corridor near downtown Renton especially designed to encourage clustering  
28 of auto sales.<sup>71</sup> CARE asserts that the Melki rezone thwarts Renton's adopted planning for  
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<sup>68</sup> CARE Reply at 6.

<sup>69</sup> CPSGMHB Case No. 07-3-0026c, Final Decision and Order (Sept. 17, 2007), at 10-22.

<sup>70</sup> ME004368 – ME004371.

<sup>71</sup> ME005993, Renton Comprehensive Plan, Auto Mall Policies.

1 the provision of regionally significant goods and services in its urban centers.<sup>72</sup> Renton has  
2 established an area for car dealerships in its urban core which CARE alleges thwarts the  
3 efficient use of land and resources established in Renton's Comprehensive plan.<sup>73</sup> As with  
4 provision of sewer service (discussed below), CARE advances its "cross-consistency"  
5 theory that this makes the Melki rezone inconsistent with GMA because it is inconsistent  
6 with Renton's CP.<sup>74</sup> The County responds that the test established by the GMHB for  
7 consistency<sup>75</sup> in coordinated planning is that one jurisdiction's plan may not thwart  
8 another's,<sup>76</sup> and that, as a matter of law, Renton does not have any obligation to plan  
9 outside its own borders.<sup>77</sup> The Goal 11 provision – "ensure coordination between  
10 communities and jurisdictions to reconcile conflicts" – does not require one jurisdiction to  
11 cede its land use authority to another.<sup>78</sup>

12  
13 Here, the Board notes Renton's Auto Mall is four miles distant from the Melki  
14 property, and no evidence has been proffered indicating the Melki rezone with p-suffix  
15 limitations thwart Renton's economic goals for its auto district.<sup>79</sup>

16  
17 **The Board finds** the County was not inconsistent with GMA Goal 11.

## 18 19 Goal (12) Public Facilities and Services

### 20 Sewer Service

21 The Board has consistently held that county plans must ensure sewer service is  
22 provided to the entire UGA within the twenty-year planning horizon.<sup>80</sup> However, CARE has  
23

24  
25 <sup>72</sup> HOM Transcript at 24.

26 <sup>73</sup> HOM Transcript at 26.

27 <sup>74</sup> HOM Transcript at 26.

28 <sup>75</sup> County Response at 13; *Laurence Michael Invs., LLC v. Town of Woodway*, CPSGMHB No. 98-3-0012.

29 <sup>76</sup> HOM Transcript at 45.

30 <sup>77</sup> HOM Transcript at 45.

31 <sup>78</sup> Significantly, Renton's Auto Mall Policies are not mandatory: "Policy LU-129. Vehicle sales in Commercial  
32 Arterial zoned areas **should be encouraged** to locate to the Renton Auto Mall District and Employment Area  
Valley designation." (emphasis added)

<sup>79</sup> Compare, *City of Shoreline v. Snohomish County*, CPSGMHB Case No. 09-3-0013c (2011), Final Decision  
and Order, at 9-10, 31-36, where the County's action impacted the adjacent city by funneling 12,860 vehicle  
trips per day onto the city's two-lane residential road without funding or planning necessary road-capacity  
improvements.

<sup>80</sup> See e.g., *MBA/Brink v Pierce County*, CPSGMHB Case No. 02-3-0010, Final Decision and Order (Feb. 4,  
2003), at 11-12 "Land within an UGA ... reflects the jurisdiction's commitment ... that it will ultimately be  
provided with urban facilities and services;" *KCRP VI v. Kitsap County*, Order Finding Partial Compliance

1 not challenged either the County's UGA boundary or the City of Renton's sewer plan.  
2 Although Renton has included the subject property within its East Renton potential  
3 annexation area (PAA), it has no immediate plan to annex the area.<sup>81</sup> Instead, CARE  
4 argues that the Melki rezone renders Renton's CP out of compliance with GMA because it  
5 does not plan to provide service as required for the adopted land use designations.<sup>82</sup>

6 The Record indicates the Renton city limits are not far from the Melki property.  
7 However, because of the topography, extension of sewer service will require tunneling or a  
8 pump station.<sup>83</sup> The city has indicated sewer extension will most likely be driven by  
9 subdivision (and then annexation) of residential property in the PAA. Responding to CARE's  
10 inquiry in 2009, the city suggested it "would not anticipate sewer coming to this area for at  
11 least 5 to 10 years."<sup>84</sup>

12 **The Board finds** that the Melki rezone does not thwart the City's sewer infrastructure  
13 plans or prevent sewer facilities from being extended in a timely manner as urban uses are  
14 developed on adjacent properties.  
15

16 Competing Goals (5) Property Rights,<sup>85</sup> (6) Economic Growth,<sup>86</sup> (9) Open Space,<sup>87</sup> and (10)  
17 Environment<sup>88</sup>

18 The County argues that the Melki rezone advances GMA goals (6) and (5) by  
19 allowing re-use of a parcel long designated Commercial Outside of Center. The Melki family  
20 purchased the property with a commercial designation. Having received assurances from  
21 multiple County representatives prior to the purchase of the property, they proceeded with  
22  
23  
24  
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26 (March 16, 2007) at 13 ("Urban Growth requires urban services, including sanitary sewer systems. The GMA  
27 mandate includes not just extending service to new developments but also bringing already-developed areas  
28 within the UGA up to an urban level of service within the planning period;" *Fallgatter v. City of Sultan*,  
29 CPSGMHB Case NO. 06-3-0003, Final Decision and Order (June 29, 2006) (water and sewer plan must  
30 address 20-year UGA).

31 <sup>81</sup> CARE Prehearing Brief at 4.

32 <sup>82</sup> HOM Transcript at 23.

<sup>83</sup> ME005327-28.

<sup>84</sup> ME005327.

<sup>85</sup> RCW 36.70A.020(5) Economic development.

<sup>86</sup> RCW 36.70A.020(6) Property rights.

<sup>87</sup> RCW 36.70A.020(9).

<sup>88</sup> RCW 36.70A.020(10).

1 the purchase in the reasonable expectation that their reuse would be allowed.<sup>89</sup>

2 Subsequently, the Melki family removed trash and appliances that had been dumped on the  
3 land, hired an environmental specialist and a wetland consultant, replanted native growth,  
4 repaired the septic holding tank, received a DNS from DDES, and put part of the property  
5 into a conservation easement.<sup>90</sup>

6 After a thorough review of the SEPA DNS and site-specific conditions, and  
7 community concerns, the examiner initially recommended the approval of the rezone subject  
8 to the following conditions: (1) limiting the location of the RB use to the portion of the  
9 property away from sensitive wetlands; (2) excluding retail sale of boats and of trucks  
10 exceeding one-ton capacity; (3) prohibiting repair and maintenance of vehicles onsite; (4)  
11 prohibiting inoperable vehicles from remaining onsite longer than 30 days; (5) gray water  
12 from vehicle washing shall not be discharged into the natural drainage system; and (6) the  
13 property shall be subjected to Certificate of Occupancy review by the DDES within 30 days  
14 of rezone approval for compliance with the Surface Water Design Manual and the Pollution  
15 Prevention Manual.<sup>91</sup> Although the examiner later reversed and recommended denial of the  
16 rezone based on an irreconcilable conflict with Former CPP-U-168<sup>92</sup> the examiner noted  
17 that "the proposed rezone poses no substantial consistency with any of the other plan  
18 policies."<sup>93</sup>

19  
20  
21 **The Board finds** that the Record contains ample evidence that the County  
22 considered competing Goals under RCW 36.70A.020.  
23

## 24 **Conclusion**

25 Petitioner argues that the Council determined that RB zoning could not be assigned  
26 in 2010 because subarea planning, sewer service, improved transportation service, and  
27 Urban Activity Center designation was required.<sup>94</sup> The County responds that the only  
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29  
30

31 <sup>89</sup> HOM Transcript at 50; ME006710 Melki testimony before the Council (September 12, 2012).

32 <sup>90</sup> ME006710, ME006711 Melki testimony before the Council (September 12, 2012).

<sup>91</sup> ME003842.

<sup>92</sup> ME005145, Examiner's Finding 17 (August 4, 2010).

<sup>93</sup> ME 005145, Examiner's Finding 18 (August 4, 2010).

<sup>94</sup> HOM Transcript at 18.

1 impediment was the requirement for subarea planning contained in former policy U-168.<sup>95</sup>  
2 Further, the Council acted within its legislative authority<sup>96</sup> when it removed the requirement  
3 of subarea planning as a prerequisite for actualization of potential zoning designations in the  
4 case of the narrow<sup>97</sup> class of properties designated CO,<sup>98</sup> noting that subarea planning is an  
5 optional element under GMA<sup>99</sup> and a “should” under the County’s comprehensive plan.<sup>100</sup>

6         The Board agrees with the County. The test of Comprehensive Plan compliance with  
7 GMA goals is consistency, not strict conformity, and should be evaluated in light of all the  
8 goals. Here, the CPs formal land use designation of the property is CO, and RB is a  
9 permissible implementing zone of the CO designation. The County applied site-specific (p-  
10 suffix conditions) that adopt the examiner’s recommendations<sup>101</sup> limiting the RB use to a  
11 resale car lot utilizing the existing structure, which has a Public Health-approved holding  
12 tank,<sup>102</sup> in order to mitigate concerns raised by Petitioner and others. In view of the entire  
13 record before the Board and in light of the goals and requirements of the GMA, the Board is  
14 not left with the firm and definite conviction that a mistake has been made.<sup>103</sup>

15         **The Board finds** the County’s action in adopting Ordinance No. 17485 was not  
16 clearly erroneous. Issue Seven is dismissed.

17         Issue 8: As a result of any of the violations in Legal Issues 1-7, does Ordinance 17485  
18 substantially interfere with the goals and requirements of the Growth Management Act,  
19 requiring invalidation?

20         Given the Board’s ruling on Legal Issues 1 through 7, there is no basis for an order of  
21 invalidity. Issue 8 is **dismissed**.

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<sup>95</sup> HOM Transcript at 35-37.

30 <sup>96</sup> The CP amendment was proper as part of the four-year review cycle. HOM Transcript at 39.

31 <sup>97</sup> There are only two parcels in King County designated CO. HOM Transcript at 56-7.

32 <sup>98</sup> HOM Transcript at 37-9.

<sup>99</sup> RCW 36.70A.080.

<sup>100</sup> HOM Transcript at 48.

<sup>101</sup> ME003840, Hearing Examiner's Finding 6 (March 31, 2010).

<sup>102</sup> ME003829.

<sup>103</sup> RCW 36.70A.320(3).

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**IV. ORDER**

Based upon review of the Petition for Review, the briefs and exhibits submitted by the parties, the Growth Management Act, prior Board Orders and case law, having considered the arguments of the parties, and having deliberated on the matter, the Board ORDERS that GMHB Case 13-3-0002 be dismissed.

SO ORDERED this 21<sup>st</sup> day of August, 2013.

\_\_\_\_\_  
Cheryl Pflug, Board Member

\_\_\_\_\_  
Margaret Pageler, Board Member

\_\_\_\_\_  
Charles Mosher, Board Member

**Note: This is a final decision and order of the Growth Management Hearings Board issued pursuant to RCW 36.70A.300.<sup>104</sup>**

<sup>104</sup> Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all parties within ten days of mailing of the final order. WAC 242-03-830(1), WAC 242-03-840. A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days as provided in RCW 34.05.514 or 36.01.050. See RCW 36.70A.300(5) and WAC 242-03-970. It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth Management Hearings Board is not authorized to provide legal advice.